

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 20179 OF 1996

DATE: 25.1.2007

Between:

M/s A.P.Industrial Infracture Corporation Limited and one another.

...Petitioners

AND

1. The Assistant Commissioner of Labour and Conciliation Officer, Hyderabad-III and one another.

....Respondents

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HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO. 20179 OF 1996

ORAL ORDER:

Questioning the show cause notice issued by the Conciliation Officer and Assistant Commissioner of Labour, Hyderabad III, dated 4.9.1996, calling upon the petitioners to show cause why prosecution should not be launched against them for their alleged victimization and un-fair labour practices under the Industrial Disputes Act, against office bearers of the Union, the present Writ Petition is filed.

In his show cause notice, in case No. D/232/96 dated 4.9.1996 the first respondent refers to certain demands of the A.P. Industrial Infrastructure Corporation Clause IV Employees Union and to the fact that on the application of estimates being filed before the Assistant Commissioner of Labour, several joint meetings were conducted, wherein representatives of the Corporation had also participated. The Assistant Commissioner of Labour states that during the pendency of the proceedings, the Union had brought to his knowledge, by letter dated 7.8.1996 that these office bearers (1) Sri Satyanandam (General Secretary) (2) B . Sreehari, Vice President (3) D.Sreenivasulu, Treasurer (4) V. Sudershan, Organizing Secretary, were transferred to various places out of the City of Hyderabad, that the Union had represented that the management had transferred them

in order to suppress the genuine trade union activities, and that the action of the management in transferring them was only to harass the office bearers. The Assistant Commissioner of Labour (Conciliation) noted that on 25.7.1996 and 30.8.1996 none from the side of the Management was present despite the service of notice and that the action of the management in transferring the said office bearers, violated Section 25-T read with Section 2 (r a) of the Industrial Disputes Act, and also attracted Clause 7 of the 5th Schedule of the Industrial Disputes Act, 1947. The petitioners were called upon to show cause as to why prosecution could not be launched against them for victimization unfairly. Questioning the order of transfer dated 25.7.1996 and 30.8.1996 Sri B. Satyanandam, B. Sreehari, D. Sreenivasulu and V. Sudershan, had approached this Court. The impugned proceedings of transfer were challenged on the ground that it was illegal, arbitrary and malafide.

This court, by order in W.P.No. 1607 of 1996 dated 20.8.1996, held that the impugned order transferring these employees from one place to another was purely on administrative grounds and the same could not be interfered with by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. This Court, however, held that the impugned order of transfer would not, in any manner affect the service conditions of the petitioner except transfer from one place to the other.

Section 25-T of the Industrial Disputes Act prohibits unfair labour practices and there under, no employer or workman or trade union shall commit any unfair labour practice. Section 25-U

prescribes the penalty for committing unfair labour practice and there under and any person who commits unfair labour practice shall be punishable with imprisonment for a term which may extent to six months or fine which may extend to Rs.1,000/- or both. Unfair labour practice is defined in Section 2 (r-a) of the Industrial Disputes Act, to mean any of the practices specified in the fifth schedule. Clause 7 of the 5th Schedule prescribes transfer of a workman mala fide from one place to another, under the guise of following management policy, as amounting to unfair labour practices. It is not every order of transfer but only the transfer order, which is mala fide, which amounts to unfair labour practice. As noted above, the Union and its Office Bearers had approached this court by way Writ Petition No. 16073 of 1996, questioning the very same orders of transfer, contending that it was vitiated by malice. This court, however, by an order dated 20.8.1996 held that the transfer orders were purely on administrative grounds. The order of this court had attained finality. In view of the order of this court holding that the orders of transfer were passed solely on administrative grounds, despite the challenge thereto by the Union and its Office Bearers as being mala fide, it must necessarily be held that the transfer orders of office bearers of the Union was not a mala fide transfer. This Judgment, inter parties having attained finality, is binding on the Union and its Office Bearers also.

Jurisdiction of the first respondent to initiate prosecution against the petitioners herein for unfair labour practice is only if a transfer order is held to be mala fide. In view of the fact that this court held that the order is purely on administrative grounds it

automatically follows that the order of transfer is not mala fide and consequently, the first respondent must be held not to have jurisdiction to initiate proceedings for prosecution against the petitioners herein for unfair labour practices inasmuch as the petitioners have not committed unfair labour practices. While this court would normally not interfere against the show cause notice except when it is issued by an authority, which is not competent to do so or suffers from inherent lack of jurisdiction, in the case on hand, the impugned show cause notice is clearly without jurisdiction and it is accordingly quashed.

Accordingly, the Writ Petition is allowed. However, in the circumstances without costs.

RAMESH RANGANATHAN , J

Dated: 25.1.2007
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